

**STATE OF FLORIDA
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS**

IN RE: PETITION FOR DECLARATORY STATEMENT BY
MICHAEL J. SWEENEY

Agency Clerk # A85359

DECLARATORY STATEMENT

Mr. Michael J. Sweeney, referred to herein as "Petitioner," has petitioned the Board of Professional Surveyors and Mappers ("Board") for a declaratory statement pursuant to Section 120.565, Florida Statutes. On September 10, 2013, the Agency Clerk for the Department of Agriculture and Consumer Services ("Department") received a Petition for Declaratory Statement filed by the Petitioner. Notice of the Receipt of the Petition was published in the *Florida Administrative Register* on September 11, 2013 at Vol.39/178. A public hearing was held on November 7, 2013. The Board was represented by Ms. Tracy J. Sumner, Esq. The Petitioner was not present.

PRELIMINARY STATEMENT

Section 120.565, F.S., provides the authority for administrative agencies to issue declaratory statements:

- (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
- (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

(3) The agency shall give notice of the filing of each petition in the next available issue of the Florida Administrative Register and transmit copies of each petition to the committee. The agency shall issue a declaratory statement or deny the petition within 90 days after the filing of the petition. The declaratory statement or denial of the petition shall be noticed in the next available issue of the Florida Administrative Register. Agency disposition of petitions shall be final agency action.

This statutory provision has been incorporated into the Florida Uniform Rules of Administrative Procedure as Rule 28-105.001, F.A.C., "Purpose and Use of Declaratory Statement."

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used only to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

Rule 28-105.003, F.A.C., "Agency Disposition," provides:

The agency may hold a hearing to consider a petition for declaratory statement. If the agency is headed by a collegial body, it shall take action on a petition for declaratory statement only at a duly noticed public meeting. The agency may rely on the statements of fact set out in the petition without taking any position to the validity of the facts. Within 90 days of the filing of the petition, the agency shall render a final order denying the petition or issuing a declaratory statement.

According to the language of Section 120.565, Florida Statutes, and the underlying administrative rules, the Legislature clearly intended the use of declaratory statements to be limited in scope. Declaratory statements determine a narrow range of issues that are the direct result of the application of agency authority to a particular set of circumstances as alleged by the petitioner. The sole purpose of a declaratory statement is to allow a petitioner to select a proper course of action in advance. *Carr v. Old Port Cove Property Owners Ass'n, Inc.*, 8 So 3d 403 (Fla. 4th DCA 2009); *Novick v. Dept of Health, Board of Medicine*, 816 So. 2d 1237, 1240 (Fla. 5th DCA 2002). This declaratory statement is based solely upon the factual assertions contained

in the Petition, together with the testimony and evidence presented at the hearing. *Alameda Isles Homeowners Association, Inc. v. State, Dept of Health*, 798 So. 2d 784 (Fla. 2nd DCA 2001).

The Department takes no position on the validity of the facts presented.

This declaratory statement comments solely on the future conduct of the petitioner only, based only upon the proposed facts contained in the Petition. While this Declaratory Statement may be used as general guidance to others, no part of this Declaratory Statement is binding upon other parties. This Declaratory Statement also may not be used to obtain a collateral estoppel or a res judicata effect. See generally, *Dept. of Revenue v. Accredited Surety & Casualty Co.*, 690 So. 2d 614 (Fla. 5th DCA 1997).

Thus, according to the language of §120.565, F.S. and the underlying administrative rules, the Legislature clearly intended the use of declaratory statements to be limited in scope.

JURISDICTION

Because the Petitioner requests a declaratory statement regarding the applicability of a rule regulating the practice of surveying and mapping in the state of Florida, the Board has jurisdiction. See generally, §§472.001, 472.007, F.S.

THE PETITION

The Petition, a copy of which is attached to this Final Order as Exhibit "A" and incorporated herein, requests the opinion of the Board regarding whether Rule 5J-17.052(2)(b)2.d, F.A.C., permits a licensed survey for Firm "A" to sign and seal the Survey Map using a boundary marker cap stamped with the LB number for Firm "B" and list both firm's LB (Licensed Business) numbers in the survey report, when Firm "A" has subcontracted Firm "B" to perform the field work under the supervision of the licensed surveyor for Firm "A."

CONCLUSIONS OF LAW


Rule 5J-17.052(2)(b)2.d, F.A.C., provides that every boundary monument set shall be identified with a durable marker or cap bearing either the Florida license number of the surveyor and mapper in responsible charge, the certificate of authorization number of the business entity or name of the business entity.

Section 472.005(6), F.S., defines "responsible charge" in part as "the direct control and personal supervision of surveying and mapping work..."

DISPOSITION

Based on the language in Rule 5J-17.052, (2)(b)2.d., F.A.C. the Board finds that the field work of Firm "B" is under the direct control and supervision of the licensed surveyor for Firm "A" and therefore every boundary monument set shall be identified with a durable marker or cap bearing the license number of Firm "A." The answer to the question is therefore, no. When Firm "A" has subcontracted with Firm "B" to perform the field work under the supervision of the licensed surveyor for Firm "A," the licensed surveyor for Firm "A" may not sign and seal the survey map but then use a boundary marker cap stamped with the LB number for Firm "B."

DONE AND ORDERED this 9th day of December, 2013.

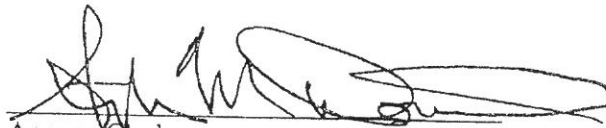


Board of Professional Surveyors and Mappers
John S. Roberts, Executive Director,
For Robin Petzold, Chair

NOTICE OF RIGHT TO APPEAL

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to S. 120.68, F.S. and Rule 9.110, Florida rules of Appellate Procedure. Review proceedings must be instituted by filing a Petition or Notice of Appeal with the Clerk, Room 509 Mayo Building, Tallahassee, Florida (30) days of rendition of the Declaratory Statement.

Filed with the Clerk, this 9th day of December, 2013.


Agency Clerk

Copies by Certified U.S. Mail, RRR, # 7011 3506 0001 3060 4636
Petitioner Name and Address: Michael J. Sweeney, 2289 West Eau Gallie, Melbourne, FL 32935

By hand delivery:
Ms. Tracy J. Sumner, Board Counsel

Petition for Declaratory Statement Before Board of Professional Surveyors and Mappers

Petitioner: Michael J. Sweeney, P.S.M 4870
2289 West Eau Gallie, Melbourne, Florida 32935
321-253-8131
FAX: 321-255-2231

Statutory Provision:

Chapter 5J-17.052 Minimum Technical Standards: Specific Survey, Map, and Report Requirements,

(2) Boundary Survey, Map, and Report:

(b) Boundary Monuments:

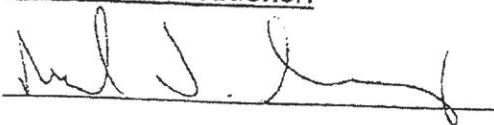
(2) Every boundary monument set shall:

d. Be identified with a durable marker or cap bearing either the Florida license number of the surveyor and mapper in responsible charge, the certificate of authorization number of the business entity; or name of the business entity;

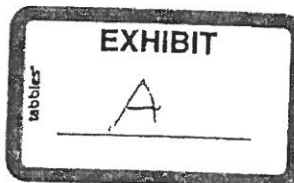
Circumstances:

Firm "A" subcontracts another licensed surveying business, Firm "B", to perform the field work under the supervision of the licensed surveyor for Firm "A". Can the licensed surveyor of Firm "A" sign and seal the Survey Map but use a boundary marker cap stamped with the LB of Firm "B" and then list both firm's LB numbers in the Survey Report?

Signature of Petitioner:



Date: September 9, 2013



Petition for Declaratory Statement Before Board of Professional Surveyors and Mappers

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SEP 10 2013

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DEPT. OF AGRICULTURE
& CONSUMER SERVICES

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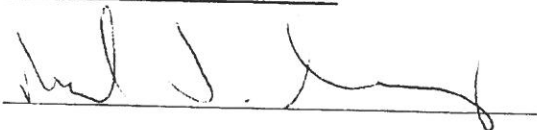
(2) Every boundary monument set shall:

d. Be identified with a durable marker or cap bearing either the Florida license number of the surveyor and mapper in responsible charge, the certificate of authorization number of the business entity; or name of the business entity;

Circumstances:

Firm "A" subcontracts another licensed surveying business, Firm "B", to perform the field work under the supervision of the licensed surveyor for Firm "A". Can the licensed surveyor of Firm "A" sign and seal the Survey Map but use a boundary marker cap stamped with the LB of Firm "B" and then list both firm's LB numbers in the Survey Report?

Signature of Petitioner:



Date: September 9, 2013